IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Transfer Application No.02 of 2007
(Under Section 407 of Code of Criminal Procedure)

Veer Singh S/o Patram

... Applicant

Versus

State of Uttaranchal & **others**

... Respondents

Dated: May 12, 2010

Sri Lokendra Dobhal, learned counsel for the applicant
Sri Amit Bhatt, learned Addl. GA for the State/Respondent No.1
Sri Narendra Bali, learned counsel for Respondent Nos.2 to 5

HON. DHARAM VEER, J.

By means of this application, the applicant has prayed to transfer the S.T. No.59 of 2009, State Vs. Vivek Malik & others, pending in the court of III FTC/Additional Sessions Judge, Hardwar to any other District of State of Uttarakhand.

Briefly stated, facts of the case are that applicant was a tenant in Room No.11 of Hotel Saket and Hotel owners Vikas Malik, Vivek Mali, & Darshan Kaur provided him a room in Nirangani Akhara for the office purpose. On 23.1.2006, the owners Vikas Malik, Vivek Malik and Darshan Kaur came with 20-25 people and beaten the applicant and thereafter, they all forcibly took the office furniture, one table fan, fax machine and 20 thousand rupees from the applicant and insulted him with cast indicated words. A FIR of the said incident was lodged on 23.1.2006 u/s 395 IPC and 3(1)(1) of S.C./S.T. Act at P.S. Kotwali, Hardwar. Thereafter, the charge sheet was filed on 26.3.2006 u/s 323/427 IPC and 3(1)(10) of S.C./S.T. Act. After submission of charge sheet, a case was initiated as Case No.1967/06 in the court of C.J.M. Hardwar and summoning proceedings were initiated on 27.4.2006 and summons were issued to all the accused persons but no body appeared in the court on various dates. It is also stated that one of the accused Vikas

Malik is a local advocate in District Haridwar and he is affecting the proceedings of Case No.1967 of 2006 by using his power and relation and threatening to applicant to take his case back and the Bar Association of District Haridwar is also supporting him to effect the proceedings of the case. It is further stated that on 17.11.08 respondents Vivek Malik and Sudarshan Sarin moved an application before the court below that Smt. Vimla Devi is an old lady of 92 years and her case may be separated and on 12.2.2009, court below separated the case of Smt. Vimla Devi. On 12.2.2009, CJM Haridwar, except the case of Smt. Vimla Devi, committed the rest of the case to the court of Sessions. Thereafter, the case was transferred to III FTC/Addl. Sessions Judge, Haridwar and it was re-numbered as S.T. No.59.2009. It is further prayed that since the date of transfer of case, the respondents are lingering the case and they are seeking adjournments on every dates. Hence, the present application.

In the counter affidavit filed on behalf of the respondents 2 to 5, it is stated Smt. Sudershan Sarin, who is also an accused, is an old lady of 87 years of age. It is further stated that the transfer application has been moved to create undue pressure by harassing the respondents. It is further stated that earlier a transfer application was also moved on behalf of the applicant which was dismissed by this Court on 10.7.2007. It is further stated that the charge has also been framed in this case. It is further stated that the applicant himself did not turn up for recording his evidence in support of the prosecution case as 5-6 dates have been given for recording his evidence.

Learned counsel for the respondents also filed the certified copies of the order sheets of the court below, a perusal of which makes it clear that 12.1.2010, 10.2.2010, 24.2.2010 and so on, the dates are being given by the trial court, but the applicant/complainant himself did not turn up before the court below for recording of his

evidence and the adjournments are being sought on his personal ground.

After considering the entire facts and circumstances of the case, perusing the order sheets of the court below as well as on a perusal of the counter affidavit filed on behalf of the respondents, it cannot be said in any way that the respondents are lingering on the trial, rather it reveals that the case is being adjourned on the request of the applicant on one pretext or another. Even otherwise, only due to the reason that one of the accused before the court below is an Advocate, it cannot be said that it would hamper the entire proceedings before the court below. Further, the respondent no.5-Smt. Sudershan Sarin is an old lady of 87 years of age and she is not able to move or walk and hence it cannot be said that she would be able to affect the trial. Further, case of Smt. Vimla Devi, who too is aged about 92 years, has also been separated from this case and is pending in the court of District Haridwar. Thus, these facts and circumstances clearly show that the applicant is not being harassed by the respondents in any way. Further, even if the case of the applicant, as prayed by him, is transferred, in that case the case of Smt. Vimla Devi would be there whose case has already been separated from the present case and there is no application before the court to transfer her case also, and by doing so, gross injustice would be done to her. Even the learned counsel appearing for the respondents also undertaken before the Court that on behalf of the respondents, no adjournment shall be sought and they shall appear before the court on each and every date.

In view of the above-said facts and circumstances of the case, the application moved u/s C407 of The Code of Criminal Procedure, 1973 is devoid of merits and is hereby dismissed. However, it is provided that in case any application for providing security to the witnesses is moved by the complainant/applicant, S.P. concerned shall do the needful in the matter.

(Dharam Veer, J.)
May 12, 2010

Rajeev Dang